



Memorandum

To: Mayor and City Council

From: Vice Mayor Cindy Chavez,
Councilmembers Linda J. LeZotte
and Ken Yeager

Subject: Censure

Date: December 13, 2005

Approved:

Recommendation:

Approval of the attached resolution Censuring Mayor Ron Gonzales for his conduct, relating to the award of the 2002 Recycle Plus! agreement by the City of San Jose to Norcal Waste Systems, Inc.

Background:

Following a report by the Civil Grand Jury, the City Council with the Mayor's recommendation, hired an independent investigator to determine whether investigation into whether or not the Mayor, Mayor's staff or other City officials or employees violated the City Charter, Municiple Code, City Policies related to ethics or independent judgment or other laws regarding the amendment to the Recycle Plus! Contract with Norcal Waste Solutions. Based on the Investigator's findings we feel that Censure is the appropriate and necessary action.

According to the revised City Council Conduct Policy 0-28 (formerly Censure Policy):

Censure is the most severe form of action contemplated in this policy. Censure is a formal statement of the City Council officially reprimanding one of its members. It is a punitive action, which serves as a penalty imposed for wrongdoing, but it carries no fine or suspension of the rights of the member as an elected official. Censure should be used for cases in which the Council determines that the violation of law or policy is a serious offense.

In order to protect the overriding principle of freedom of speech, the City Council shall not impose censure on any of its members for the exercise of his or her First Amendment rights, no matter how distasteful the expression was to the Council and the City. However, nothing herein shall be construed to prohibit the

City Council from collectively condemning and expressing their strong disapprobation of such remarks.

RESOLUTION NO. _____

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN
JOSE APPROVING THE CENSURE OF MAYOR RON
GONZALES**

WHEREAS, the City Council of the City of San Jose received the 2004-05 Santa Clara County Civil Grand Jury Report regarding the conduct of City of San Jose officials relating to the award of a 2002 Recycle Plus! Agreement by the San Jose City Council to Norcal Waste Systems, Inc. ("Norcal"); and

WHEREAS, on September 13, 2005, the City Council approved an independent investigation be conducted as to whether the Mayor, Mayor's staff, or other City officials, officers or employees violated the City Charter, Municipal Code, the City's Independent Judgment Policy, or other laws with respect to the matters specified by the Santa Clara County Civil Grand Jury

WHEREAS, on December 5, 2005, an Initial Report of the Independent Investigator was issued regarding to the investigation.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

Pursuant to City Council Policy No. 0—28 entitled the "City Council Conduct Policy", the City Council of the City of San Jose hereby censures Mayor Ron Gonzales for the following conduct:

1. That Mayor Ron Gonzales did not share material facts with the City Council relating to the potential increase costs to be incurred by Norcal and its subcontractor California Waste Solutions("CWS")with regard to the 2003-04 rate increase and the Second Contract amendment (2004)

which was inconsistent with the ethical standards set forth in City Charter Section 204.

2. That in fall 2000 Mayor Ron Gonzales did not share with the City Council assurances he made to Norcal that he would bring a recommendation to the City Council to amend the Norcal contract once the increased costs at the CWS materials recovery facility were determined and verified, which was inconsistent with the ethical standards set forth in City Charter Section 204.
3. That in Spring of 2003 Mayor Gonzales did not share with the City Council information regarding the full rationale for the 2003-04 Recycle Plus! Rate increase and misled the City Council and the public regarding the use of funds generated by the rate increase by not sharing his intent to use a portion of the funds generated by the 2003-04 Recycle Plus rate increase to reimburse Norcal for increased costs incurred by CWS, which was inconsistent with the ethical standards set forth in City Charter Section 204.

ADOPTED this _____ day of _____, 2005, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CINDY CHAVEZ
Vice-Mayor

ATTEST:

LEE PRICE, CMC
City Clerk